

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5117 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

1 to 5 : No

FULABHAI SHAMALBHAI PATEL

Versus

STATE OF GUJARAT

Appearance:

MR PJ VYAS for Petitioner

MR SP DAVE, AGP for Respondent No. 1, 2

CORAM : MR.JUSTICE S.D.DAVE

Date of decision: 31/01/97

ORAL JUDGEMENT

The petitioner-Fulabhai Patel and his five sons had filed the Form No.1 under Section 6 of the Urban Land (Ceiling and Regulation) Act, 1976, on August 31, 1976. The Competent Authority had issued the draft statement and the notice under Section 8 of the Act, on October 5, 1982 and October 14, 1982 respectively. The Competent

Authority had passed the necessary orders on February 25, 1991, declaring the total area of 41676 sq.mtrs. as the excess vacant land. The appeal before the Tribunal filed by the petitioner and his sons came to be dismissed, vide orders dated March 24, 1992. The orders of the Competent Authority have been passed after the exemption under Section 20 of the ULC Act, 1976, came to be withdrawn or cancelled. Because of this position, ultimately, the land as indicated hereinabove came to be declared as excess vacant land. It appears that, under a belief that, because of the exemption under Section 20 of the Act of 1976, nothing would be excess, no option was exercised by the petitioner and his sons specifying the vacant lands within the ceiling limits which they would desire to retain.

When the orders pronounced by the Competent Authority are perused, it is clear that, according to him, the total holding would be 49930 sq.mtrs. Five units were given which would be equal to 5000 sq.mtrs. An area of 3254 sq.mtrs. was covered under Section 2(Q)(1) of the Act of 1976. Ultimately, the Competent Authority has come to the conclusion that the excess vacant land would be 41676 sq.mtrs. These orders have become final because, the ULC Tribunal was pleased to dismiss the appeal of the petitioner, under the orders dated March 24, 1992.

But, the fact remains that the petitioner and his five sons have not been able to exercise their right of making a choice or selection as understood within the meaning of Section 6 of the ULC Act, 1976. They had no occasion or the opportunity to specify the vacant land within the ceiling limits which they would desire to retain. The orders of the Competent Authority would go to show that, they were allowed to retain the land from Survey No. 125, though no such choice was made by the petitioners. The grievance of the petitioner before me is that, when had not exercised the right of choice, he could not have been made to retain the land from Survey No.125. Learned Counsel Mr.Vyas for the petitioner makes it clear that the petitioner would like to retain the land from Survey No.243/1/1 which admeasures 8449 sq.mtrs. but this could be done only if the matter is remanded to the Competent Authority with a direction that the petitioner should be permitted to have the choice as understood within the meaning of Section 6 of the ULC Act, 1976.

I, therefore, grant the present petition in part and order the remand of the matter to the Competent Authority only for the limited purpose of giving the

opportunity to the petitioner to exercise the right of choice or selection. When the matter goes back before the Competent Authority, it would be open for the petitioner to exercise the right by filing the written statement in this respect. The Competent Authority shall decide the matter accordingly. Rule is made absolute to the above said extent only, with no order as to costs.
